

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-02/11

Date: 14 May 2012

**TRIAL CHAMBER V**

**Before:** Judge Kuniko Ozaki, Presiding  
Judge Christine Van den Wyngaert  
Judge Chile Eboe-Osuji

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
*THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA  
AND  
UHURU MUIGAI KENYATTA***

**URGENT**

**Public**

**Order scheduling a status conference**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo  
Ms Fatou Bensouda

**Counsel for Francis Kirimi Muthaura**

Mr Karim Khan, Mr Essa Faal,  
Mr Kennedy Ogetto, Ms Shyamala  
Alagendra

**Counsel for Uhuru Muigai Kenyatta**

Mr Steven Kay  
Ms Gillian Higgins

**Legal Representatives of Victims**

Mr Morris Anyah

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Others**

1. In accordance with Rule 132(1) of the Rules of Procedure and Evidence ("Rules") which provides that "[p]romptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial", a status conference shall be held on 12 June 2012 starting at 13.00.
  
2. In order to facilitate the preparation for the status conference of the parties, that is the Office of the Prosecutor ("prosecution") and the defence, as well as the legal representatives of victims and the Registry, Trial Chamber V ("Trial Chamber") issues the following agenda for the status conference:
  - A. Date of the trial;<sup>1</sup>
  - B. Languages to be used in the proceedings, in particular, the languages spoken by the witnesses the parties intend to call and by any victims the legal representatives may seek authorisation to call;
  - C. Anticipated length of the presentation of evidence at trial;
  - D. Timing, volume and format of disclosure of evidence by the prosecution pursuant to Rule 76 of the Rules;
  - E. Material already disclosed and intended to be disclosed by the prosecution pursuant to Article 67(2) of the Rome Statute ("Statute") and Rule 77 of the Rules;
  - F. Whether there are any outstanding issues relating to documents or information which the prosecution obtained on the condition of confidentiality pursuant to Article 54(3)(e) of the Statute;

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<sup>1</sup> On 25 April 2012, the defence for Uhuru Muigai Kenyatta and the defence for Francis Kirimi Muthaura filed a joint "Request to Postpone Setting Trial Date Pending Appeals Chamber's Determination of Jurisdiction Appeal" (ICC-01/09-02/11-417), whereby they seek the postponement of the setting of a trial date until the Appeals Chamber has rendered its decision on the "Document in Support of Appeal on behalf of Uhuru Muigai Kenyatta and Francis Kirimi Muthaura pursuant to Article 82(1)(a) against Jurisdiction in the 'Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute'" (ICC-01/09-02/11-399 ). The present order of the Trial Chamber is without prejudice to that joint request, a decision on which shall be rendered in due course.

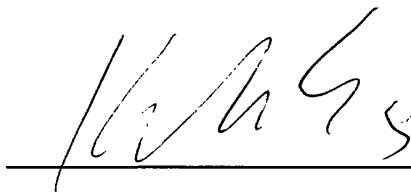
- G. Whether the prosecution anticipates issues concerning the protection of witnesses and other persons (including the need for redactions), the disclosure of the identities of witnesses, as well as referrals to the Court's witness protection program. The prosecution is requested to provide a detailed list of those items of evidence it intends to include in its List of Incriminating Evidence or disclose to the defence pursuant to Article 67(2) of the Statute and/or Rule 77 of the Rules, with respect to which redactions or other protective measures are required; including whether redactions previously authorised by the Pre-trial Chamber need to be maintained;
- H. Whether the defence intends to advance a defence in accordance with Rules 79 and 80 of the Rules;
- I. Whether the parties intend to call experts in accordance with Regulation 44 of the Regulations of the Court ("Regulations"), and if so, whether they intend to give joint or separate instructions to expert witnesses;
- J. Agreements as to evidence pursuant to Rule 69 of the Rules;
- K. Time limit for the submission of applications for victim participation;
- L. E-court protocol;
- M. Whether the parties intend to make any objections or observations concerning the conduct of the proceedings which are still pending or have arisen since the confirmation hearing, pursuant to Rule 134(2) of the Rules;
- N. Whether the parties intend to make applications for a legal re-characterisation of facts under Regulation 55 of the Regulations;
- O. Whether the parties envisage that a site visit may be necessary, and, if so, at what stage of the proceedings;
- P. Whether a protocol regulating contacts between the parties and protected witnesses called by another party is necessary; including guidelines on the conditions under which the parties may make reference to the identity of

protected witnesses, including the fact that they are witnesses, during their investigation.

3. In order to facilitate adequate preparations for the status conference, the parties are requested to make written submissions on those of the above listed points of the agenda which are of relevance to them and file such submissions not later than 28 May 2012. The common legal representatives may make submissions on items A-C. The Registry is requested to make submissions on items G and L.
4. Should the parties, the legal representatives of victims and the Registry wish to add other items to the agenda of the status conference, they should indicate it in their written submissions. If the parties, the legal representatives of victims and the Registry are currently aware of any other issue that is required to be resolved before the commencement of the trial, they should bring it to the attention of the Chamber promptly.
5. The parties and the legal representatives of victims are also requested to make written submissions on their interpretation in law of the mode of individual criminal responsibility applicable to the present case and file such submissions no later than 25 June 2012.
6. The Trial Chamber notes that in its decision of 9 March 2012 in the case of *The Prosecutor v. William Samoei Ruto et al.*, Pre-Trial Chamber II ruled that “the Victims’ Legal Representative’s mandate was limited to the confirmation of charges hearing and related proceedings, and thus did not include, in and of itself, future

involvement in the case.”<sup>2</sup> On 23 April 2012, the Appeals Chamber ruled that “unless and until the representation agreement is brought to an end pursuant to article 17 of the Code [of Professional Conduct for counsel], the Legal Representative continues to represent the Victims”.<sup>3</sup> The Trial Chamber considers that in light of the latter ruling the legal representative of victims in this case shall provisionally continue to represent victims currently participating in the proceedings before the Trial Chamber until a decision is made on the legal representation of victims.

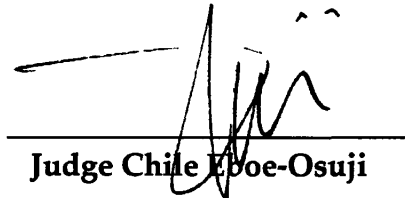
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding**



**Judge Christine Van den Wyngaert**



**Judge Chile Eboe-Osuji**

Dated this 14 May 2012

At The Hague, The Netherlands

<sup>2</sup> Decision on the "Urgent Request by the Victims' Representative for an order from the Chamber requiring the Registrar to provide appropriate resources for the current mission in Kenya", ICC-01/09-01/11-398, para. 14.

<sup>3</sup> Decision on the "Notification regarding the Legal Representation of Participating Victims in the Appeal Proceedings", 23 April 2012, ICC-01/09-02/11-416, para. 18.